FILED
APR 25 1
MICHAEL RODAK, J

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1597

GERRIT LANSING,

Petitioner,

v.

New York Stock Exchange
An Unincorporated Association

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

FRANK DELANEY
Attorney for Petitioner
750 Park Avenue
New York, N.Y. 10021
879-4600

Dick Bailey Printers • P.O. Box X, Staten Island, N.Y. 10302 • Tel.: (212) 447-5358

INDEX TO PETITION

	Page
Opinion Below	1
Jurisdiction	2
Questions Presented	2
Statement of Facts Material to the Consideration with Briefs on the Merits and Oral Arguments	4
Reasons why the Questions are so Substantial as to Require Plenary Consideration with Briefs on the Merits and Oral Arguments	5
Basis for Federal Jurisdiction in Court of First Instance	6
Conclusion	7

AUTHORITIES CITED

U.S. v. Beatty, 232 U. 463	2
Shapiro v. U.S., 325 U.S. 12	2
S.E.C. Act of 1934—U.S.C.S. 404, 48 State 881 Title I, Section 1, as amended	6
New York Penal Law Section 115.00 and 215.45	3

INDEX TO APPENDIX

Appendix "A"—Memorandum Decision of Bonsal D.J. July 9, 1973 ..... A-1

Appendix "B"—Judgment of U.S. Court of Appeals Second Circuit January 28, 1976 ..... A-8

Appendix "C"—Judgment of the U.S. District Court for the Southern District of New York May 24, 1973 ..... A-9

In the
SUPREME COURT OF THE UNITED STATES

October Term, 1973

GERRIT LANSING,

Petitioner

v.

New York Stock Exchange
An Unincorporated Association

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Gerrit Lansing, plaintiff-appellant for his petition prays that a Writ of Certiorari issue to review the judgment of the U.S. Court of Appeals for the Second Circuit entered herein on January 28, 1974.

OPINIONS BELOW

(a) There are no official or unofficial reports of opinions of the Court below. The only opinion is a post-decision memorandum by Judge Bonsal in the U.S. District Court for the Southern District of New York dated July 9, 1973. No opinion is reported. The memorandum of Judge Bonsal is appended.

JURISDICTION

(b) The grounds on which the jurisdiction of this Court is invoked are found in 28 US 1254 subdivision 1.

JURISDICTION AND AFFIRMANCE BELOW

(i) The date of the judgment in the U.S. District Court is May 24, 1973. It was entered on May 24, 1973. The post-decision memorandum in the U.S. District Court Southern District of New York was filed on July 9, 1973. The date of the judgment of the United States Court of Appeals for the Second Circuit is January 28, 1974, entered on that day after argument. A copy is appended. The statutory provision believed to confer on this Court jurisdiction of this appeal is 28 U.S. Code 1254 Subdivision 1: The cases believed to sustain jurisdiction are, *U.S. vs. Beatty* 232 U.S. 463 *Shapiro vs. U.S.* 235 U.S. 12.

QUESTIONS PRESENTED FOR REVIEW

(c) The questions presented by this appeal are as follows:

(1) Whether plaintiff established a prima facie case of fraud by defendant New York Stock Exchange when he proved that with knowledge of its employee Examiners charged by defendant with the duty to check member firms' financial statements of financial condition filed with the defendant as required by defendant found that audit which was filed on February 20, 1967 (Plff's Exhibit 19) did not conform to the Financial Questionnaire prepared by Haskins & Sells and filed by defendant with the S.E.C. (Plff's Exhibit 5) upon which audit (Plff's Exhibit 2) defendant required plaintiff to rely as a condition to their allowing plaintiff to become a subordinated lender.

(2) Whether plaintiff established a prima facie case that the defendant New York Stock Exchange delegated to Pickard & Company, Inc., a member of the association of

the defendant New York Stock Exchange to obtain as its agent from plaintiff the so called knowledgeability letter on which defendant required by its terms that plaintiff rely as the latest certified audit of Haskins & Sells dated August 31, 1966.

(3) Whether the said alleged certified copy of the audit of Haskins & Sells filed on February 20, 1974 but dated December 14, 1966 was not an authentic certified copy of the audit but a forgery by completion by a certification of the earlier audit of Haskins and Sells, and in fact was itself never certified by anyone as pretended.

(4) Whether plaintiff established a prima facie case of fraud by defendant in suppressing its knowledge of embezzlement by officers of Pickard & Company on or before June 16, 1966 without taking disciplinary measures required by its rules and permitting Pickard & Company, Inc. to continue to solicit subordinated capital because the defendant wished to improve the capital ratio of Pickard & Company, Inc. so as to avoid their suspension and the damage thereof to defendant association of which it was a member.

(5) Whether defendant did not acknowledge it knew of this embezzlement by the execution of a subsequent proof of loss to an insurance company executed by its Chief Examiner McChesney acting as Liquidator on defendant's behalf.

(6) Was defendant guilty of Criminal facilitation of compounding a crime under Penal Law of New York Section 115.00 and 215.45 for retaining in its files as valid a financial statement of a member firm that was forged by completion and in suppressing an embezzlement by officers of said member firm without denouncing same and informing plaintiff and other customers and prospective customers.

STATEMENT OF FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED

(c) Plaintiff became a subordinated lender to a member of an association, known as the New York Stock Exchange, on June 8, 1967. Within the year the member firm was disclosed to be hopelessly insolvent. As a condition to his being permitted by defendant to become a subordinated lender plaintiff was obliged to sign a so-called knowledgeability letter in which it was specifically provided that he should rely on the latest certified audit of the member firm by Haskins & Sells dated October 31, 1966. On behalf of the defendant, an officer of the member firm gave plaintiff the purported latest certified audit of the member firm by Haskins & Sells dated October 31, 1966, and thereupon obtained and forwarded to defendant the so-called knowledgeability letter as required by defendant.

The defendant gave plaintiff the purported certified copy of the audit by Haskins & Sells dated as of October 31, 1966 but actually dated December 14, 1966, which it still retains in its files but which in fact is a forgery by completion and which was purported to be certified by a certification of Haskins and Sells of an earlier audit. Haskins and Sells refused to certify that audit. The audit received by plaintiff from defendant and its alleged certification was dated December 14, 1966 but was not prepared at that time but was made up on or about February 20, 1967. It was altered, and Haskins & Sells had refused to make the alterations, and the member firm merely attached the December 14, 1966 certificate of Haskins & Sells to the altered audit made up on February 20, 1967.

Defendant learned and knew of this alteration upon examination of the altered audit with the false authentication on March 30, 1967 and May 10, 1967 when it was checked by its examiners with the report to the S.E.C. certified on December 14, 1966 by Haskins & Sells.

Defendant knew of the difference of classification of the report, which was the alteration but decided it did not matter and it did not require certification by Haskins and Sells of the altered audit. What was obscured was that its principal officers had embezzled $318,000 from the member firm.

The embezzlement was suppressed by defendant who knew of it on or prior to June 16, 1966 but acquiesced in the substitution by the embezzlers of capital stock in place of the cash. Defendant facilitated criminally the compounding of the crime and did not take the necessary action required by its rules against the embezzlers. As a result when in February 1967 or even earlier the member firm had become insolvent these same officers had increased their embezzlements to some $600,000 a sum sufficient to render this small member firm insolvent.

In the meantime the defendant by various means had delayed the public discovery of these embezzlements by procuring the appointment without any legal sanction of any kind of their employee McChesney, Chief Examiner of defendant New York Stock Exchange, as unofficial liquidator of the insolvent firm, who took over all the accounts and assets including plaintiff's account without any consent from him and proceeded to operate them as defendant wished, and expended the proceeds in its illegal acts and administration of these assets.

THE REASON WHY THE QUESTIONS ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION WITH BRIEFS ON THE MERITS AND ORAL ARGUMENTS.

The decision ignores the fact that it is based on facts that include ignoring a forgery by completion by defendant-appellee respondent with knowledge thereof, and acts participated in by defendant-appellee respondent that constitute criminal facilitation in compounding crime under the Penal Law of the State of New York, for their own advantage and profit.

Here is the defendant-appellee New York Stock Exchange a nationally known institution, having quasi-official status, deliberately accepting as a valid authentication by accountants, Haskins & Sells of a financial report of a member firm, required by its rules to be distributed to its customers, and on which defendant-appellee specifically required plaintiff-appellant to rely, which certification they knew was the certification of an earlier document not authorized by the certifier Haskins & Sells to be appended to the document given to plaintiff-appellant.

The decision further ignores the fact that the defendant appellee New York Stock Exchange with knowledge of the embezzlement by the principal officers of the member firm in June 1966 in violation of its Rules having the force of law, did not expose and punish this embezzlement and participated in an agreement of June 16, 1966 which was criminal facilitation of compounding a crime under the Penal Law of the State of New York.

That the immorality and illegality of the acts in which defendant-appellee respondent knowingly participated should not in the interest of justice be countenanced by this Court or the Courts of the United States. Only by these acts having been suppressed could plaintiff-appellant petitioner have been induced to subordinate his account.

In so doing the Courts below have so far departed from the accepted and usual course of judicial proceedings and has so far sanctioned such a departure by a lower Court, to call for an exercise of this Court's power of supervision.

BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE

The jurisdiction is founded on the existence of a Federal question and the amount in controversy. The action arises under the Securities Exchange Act of 1934, being the Act of 1934, U.S.

C. S. 404, 48 Stat. 881, Title 1, Section 1, as amended, as herein is more fully set forth. The matter is controversy exceeds, exclusive of interest and costs the sum of ten thousand dollars.

CONCLUSION

FOR THESE REASONS, STATED ABOVE, IT IS PRAYED THAT A WRIT OF CERTIORARI ISSUE TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT TO REVIEW ITS AFFIRMANCE OF THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT.

Respectfully submitted,

FRANK DELANEY
Attorney for Petitioner
750 Park Avenue
New York, New York 10021